

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

RECEIVED

FEB 13 2004

In the Matter of:)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARYImplementation of Section 304 of the
Telecommunications Act of 1996)

CS Docket No. 97-80

Commercial Availability of Navigation
Devices)

PP Docket No. 00-67

Compatibility Between Cable Systems and
Consumer Electronics Equipment)
_____)**COMMENTS OF BELL SOUTH ENTERTAINMENT, LLC**

BellSouth Entertainment, LLC, on behalf of itself and its affiliated companies
 (collectively, "BellSouth") hereby offers its comments on the *Second Further Notice* in the
 above-captioned proceedings.¹

BellSouth and its affiliated companies provide cable service in 14 franchise areas in
 Alabama, Florida and Georgia. BellSouth is the only large local exchange carrier ("LEC") "to
 offer video service over franchised cable systems."² In addition, BellSouth and DIRECTV, Inc.
 ("DIRECTV") have a strategic marketing alliance to offer BellSouth residential customers

 No. of Copies rec'd 014
 List A B C D E

¹ See Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices; Compatibility Between Cable Systems and Consumer Electronics Equipment, *Second Report and Order and Second Further Notice of Proposed Rulemaking*, CS Docket No. 97-80, PP Docket No. 00-67 (rel. Oct. 9, 2003) ("Second Further Notice").

² In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, *Tenth Annual Report*, MB Docket No. 03-172 (rel. Jan. 28, 2004) ("Tenth Annual MVPD Competition Report"), at ¶ 116.

DIRECTV digital satellite television service beginning in early 2004.³ Thus, BellSouth is a multichannel video programming distributor (“MVPD”) with a direct interest in this proceeding.

I. THE COMMISSION SHOULD PERMIT THE DOWN-RESOLUTION OF NON-BROADCAST MVPD PROGRAMMING

The *Second Further Notice* seeks additional comment on the issue of whether the Commission should prohibit the activation by MVPDs of down-resolution for non-broadcast MVPD programming content.⁴ BellSouth urges the Commission not to restrict the use of this important content protection tool.

The National Cable & Telecommunications Association has expressed the policy concern, acknowledged in the *Second Further Notice*, that content providers may not be willing to make certain valuable non-broadcast content available to an MVPD for distribution unless the MVPD can provide some assurance of adequate content protection.⁵ BellSouth shares this concern, and agrees with those parties that have argued for maximum flexibility by MVPDs to deploy multiple content protection mechanisms – including a constraint on content resolution – as necessary to reassure content providers that their high-value content will be protected.⁶ As MVPDs like BellSouth consequently are able to gain access to such content, consumers, in turn, will be better off in the long run as such content proliferates in the MVPD marketplace.

Furthermore, with respect to down-resolution specifically, BellSouth agrees with the Commission’s observation that this content protection measure is user-friendly, in that a viewer

³ This alliance will assist BellSouth in continuing its efforts, announced in 2000, to restructure its wireless video business.

⁴ *Second Further Notice* at ¶ 82.

⁵ *Id.* at ¶ 63.

⁶ See, e.g., Comments of EchoStar Satellite LLC, CS Docket No. 97-80 (Jan. 14, 2004), at 4; Comments of DIRECTV, Inc., CS Docket No. 97-80 (Mar. 29, 2003), at 7.

can still receive a good quality television picture (albeit at a lower resolution).⁷ Recognizing that the Commission in this proceeding is attempting to strike a balance between content protection and consumer expectations regarding digital cable ready television sets, BellSouth believes that the Commission's allowance for MVPDs to activate down-resolution will be a useful and important measure that ultimately will spur the digital transition to all consumers' benefit.

II. THE COMMISSION SHOULD NOT DESIGNATE CABLELABS AS THE SOLE INITIAL ARBITER OF OUTPUTS AND ASSOCIATED CONTENT PROTECTION TECHNOLOGIES TO BE USED IN UNIDIRECTIONAL CABLE PRODUCTS

The *Second Further Notice* also seeks comment on the possibility of designating CableLabs, a consortium that is wholly-owned by incumbent cable operators, to act as "the sole initial arbiter of outputs and associated content protection technologies to be used in unidirectional digital cable products."⁸ BellSouth does not believe that this is a wise policy choice.⁹

Without ascribing any overtly sinister intent to CableLabs, it is nonetheless difficult to dispute that CableLabs will be placed in an institutionally difficult position when asked to make determinations on outputs and content protection technologies that affect non-cable MVPDs (or non-incumbent cable MVPDs). CableLabs is a self-described "consortium that is dedicated to helping its cable operator members integrate new cable telecommunications technologies into

⁷ *Second Further Notice* at ¶ 64.

⁸ *Id.* at ¶ 83.

⁹ BellSouth notes that DIRECTV in a separate petition also has asked the Commission to reconsider CableLabs' role with respect to managing changes to the DFAST license. Petition for Reconsideration of DIRECTV, Inc., CS Docket No. 97-80, PP Docket No. 00-67 (Dec. 29, 2003), at 7-8.

their business objectives”¹⁰ – and cable operators’ “business objectives” of course include keeping an edge, if possible, over non-cable or non-incumbent MVPD competition.

The Commission has concluded in the program access context that cable-affiliated programmers continue to have the incentive and ability to harm competing MVPDs by withholding access to important programming.¹¹ A similar concern arises with respect to CableLabs’ proposed “gatekeeping” role here regarding the approval of new outputs and content protection technologies.

Thus, BellSouth believes that the Commission’s expressed concerns regarding the effect of CableLabs’ gatekeeping role on innovation and interoperability in the MVPD marketplace with respect to unidirectional digital MVPD devices¹² are well-founded. As an alternative, BellSouth supports the appointment of a qualified, independent third party entity to serve as the sole initial arbiter of outputs and associated content protection technologies under the Commission’s Plug and Play framework. BellSouth is willing to assist the Commission in either identifying such an organization, or working to establish one if necessary.

¹⁰ www.cablelabs.com.

¹¹ See, e.g., *Program Access Extension Order* at ¶ 4 (stating that an “MVPD’s ability to provide service that is competitive with an incumbent cable operator is significantly harmed if denied access to ‘must have’ vertically integrated programming for which there are no good substitutes” and finding that “vertically integrated programmers retain the incentive to favor their affiliated cable operators over competitive MVPDs such that competition and diversity in the distribution of video programming would not be preserved and protected”); *In the Matter of Implementation of Sections 12 and 19 of the Cable Television Consumer Protection Competition Act of 1992*, Memorandum Opinion and Order on Reconsideration of the First Report and Order, 10 FCC Rcd 3105, 3123 (1994), ¶ 35 (citations omitted) (“The legislative history of Section 628 specifically, and of the 1992 Cable Act in general, reveals that Congress was concerned with market power abuses exercised by cable operators and their affiliated program suppliers that would deny programming to non-cable technologies.”).

¹² *Second Further Notice* at ¶ 78.

III. CONCLUSION

BellSouth respectfully requests that the Commission act in accordance with its
Comments above.

Respectfully submitted,

BellSouth Entertainment, LLC

By: 

Gary M. Epstein

James H. Barker

LATHAM & WATKINS

555 Eleventh Street, N.W.

Suite 1000

Washington, D.C. 20004-2505

(202) 637-2200

February 13, 2004